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May 10, 1996

E. L. Sorensen, Jr.
Executive Director

Ms. G--- S---
P--- P--- E---
XXXX --- --- Way
--- ---, CA XXXXX

Re: P--- P--- E---
Account No. SR -- XX-XXXXXX

Dear Ms. S---:

This is in response to your letter dated March 8, 1996, regarding the application of sales tax to your sales of pallets to trucking companies. You ask "whether trucking companies purchasing empty pallets to replace the loaded ones taken from their customers are liable for sales tax on the pallets."

With your letter, you have enclosed a copy of an exemption certificate which appears to be executed by G--- T---, Inc. pursuant to the Washington Retail Sales Tax Law. You ask whether that exemption certificate exempts G--- T---, Inc. from its tax liability, if any, under the California Sales and Use Tax Law.

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) Sales tax is imposed upon the retailer, but the retailer may collect sales tax reimbursement from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.)

The exemption relevant to the transaction at issue is provided by Revenue and Taxation Code section 6364, which exempts sales of containers under specific conditions. This statute is interpreted in Sales and Use Tax Regulation 1589 (copy enclosed) which provides that the term "container" includes articles on which tangible personal property is placed for shipment, and specifically includes pallets. Pallets may be classified as either returnable or nonreturnable

containers, depending on how the pallets are used. Subdivision (a) of Regulation 1589 defines the term "returnable containers" as containers of a kind customarily returned or resold by the buyers of the contents for re-use by the packers, bottlers, or sellers of the commodities contained therein. All other containers are "nonreturnable containers."

The empty pallets purchased by the trucking companies to replace loaded ones taken from their customers constitute returnable containers. Your sales of the pallets to the trucking companies for such use are subject to tax. (Reg. 1589(b)(1).)

We note that the exemption certificate G--- T---, Inc. provided to you was apparently executed pursuant to the Washington Retail Sales Tax Law and is irrelevant as to the proper application of tax under the California Sales and Use Tax Law.

If you have further questions, please feel free to write again.

Sincerely,

Sophia H. Chung
Staff Counsel

SHC:rz

Enclosure

cc: Sacramento District Administrator (KH)